

Court of Appeals, State of Michigan

ORDER

People of MI v Francis Xavier-Louis Rousse III

Docket No. 287443

LC No. 06-002775 FH

Stephen L. Borrello
Presiding Judge

William C. Whitbeck

Patrick M. Meter
Judges

On the Court's own motion, the Clerk's Office is directed to docket defendant's delayed application for leave to appeal filed on August 29, 2008, as having been timely filed within the deadline set forth in MCR 7.205(F). *People v Means*, 480 Mich 989 (2007).

The defendant's appellate attorney clearly failed to understand that the time period to file this application for leave to appeal started with entry of the March 6, 2008, order that appointed her appellate counsel and that under MCR 7.205(F)(4) she had to file this application no later than April 17, 2008, 42 days later. The motion filed by the defendant pro per on January 10, 2008, was not a proper motion either as a motion for resentencing or as a motion for relief from judgment. It could not be a motion for resentencing as it was not filed within six months of the February 2007 judgment of sentence as required by MCR 6.429(B)(3). It could not have been a motion for relief from judgment because defendant could still have filed an application for leave to appeal from the judgment of sentence when the motion was filed. See MCR 6.501. Defendant's only option was to file an application for leave to appeal from the judgment of sentence. Accordingly, the defendant was deprived of his appeal of his conviction and the judgment of sentence as a result of constitutionally ineffective assistance of appellate counsel. Costs are imposed against appellate counsel only in the amount of \$250, to be paid to the Clerk of this Court within 21 days of the Clerk's certification of the order.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

SEP 11 2008

Date

Sandra Schultz Mengel
Chief Clerk